

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3279 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAMODRAI KANSARA

Versus

JASHBHAI K PATEL

Appearance:

MR PK JANI for Petitioners
MR MC SHAH for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/02/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondent no.1 i.e. Chief Officer,

Nadiad Municipality, Nadiad to pay to the petitioner salary in the scale of Rs.425-700 as per resolution dated September 22, 1981 passed by the Executive Committee of Nadiad Municipality as well as resolution dated April 29, 1983 passed by the General Board of the said Municipality. The petitioners have also prayed to direct the respondents to pay arrears of salary on the basis of the above referred to two resolutions with interest at the rate of 12% p.a.

2. The petitioner no.1 was initially appointed as an Octroi Clerk in Nadiad Municipality on February 1, 1955. In the year 1977 he was promoted to the post of Payment Clerk. The petitioner no.2 was employed with Nadiad Municipality on October 26, 1949 and was discharging duties as an Establishment Clerk at the time of filing of the petition. The employees of Nadiad Municipality had raised disputes with regard to their pay scale and conditions of service. A reference was made by the State of Gujarat to the Industrial Tribunal, Gujarat State, Ahmedabad for adjudication of those disputes. It was registered as Reference No. (IT NO.880/72). The parties to the disputes had presented consent terms before the Industrial Tribunal and in accordance therewith pay scales of different categories of the Nadiad Municipality were fixed as under:-

1. Treasurer Rs.80 - 5-100-60-140-8-220-10-240
2. Payment Clerk do
3. Stores Clerk (Sr) do
4. Establishment Clerk do

The award rendered by the Tribunal remained in force for a period of 5 years. Thereafter the union of employees serving with Nadiad Municipality again raised certain disputes whereupon a reference was made to the Industrial Tribunal for adjudication. That reference was registered as Reference (IT) 200/97. The disputes related to number of matters including revision of pay scales of the employees of the Municipality. Again a settlement was arrived at between the parties on the basis of which the pay scales were revised by the Tribunal as under:-

 Sr. Post Existing Revised
 No. pay scale pay scale
 1. 2. 3. 4.

1. Treasurer Rs.80-240 Rs.425-15-500-EB-15-560-20-600-EB-20-700

2. Pay Clerk -Do- Rs.350-12-410-EB-12-470-EB-15-560-20-600
3. Store-Clerk (Sr) -Do- Rs.425-15-500-EB-15-560-20-600-EB-20-700
4. Establishment Clerk (Sr) -Do- Rs.350-12-410-EB-12-470-EB-15-560-20-600

The revision of pay scale made by the Tribunal makes it evident that pay scales of the Treasurer and Stores Clerk (Sr) are Rs.420-700 whereas those of the payment Clerk and Establishment Clerk (Sr) are Rs.350-600. In view of the disparities in the pay scale, the petitioners made representation dated June 19, 1979 to the President of Nadiad Municipality and requested him to redress their grievances. In the said representation, it was emphasized that though the petitioners were discharging same duties as were being discharged by the Treasurer and Stores Clerk (Sr) they were paid less salary and therefore their pay scales should be equated with the pay scales of Treasurer and Stores Clerk (Sr). As no response was given by the Present of the Municipality to the representation referred to above, another representation dated April 27, 1981 was made by the petitioners making grievances about the disparity of pay scales. Thereafter the Executive Committee of the Nadiad Municipality passed a resolution at its meeting which was held on September 22, 1981. In the said resolution it was provided that the petitioners who were working as payment clerk and establishment Clerk respectively be paid salary in the pay scale of Rs.425-700. The Executive Committee also recommended the general board of the Municipality to pass an appropriate resolution after accepting the recommendation made by it. The resolution passed by the Executive Committee of the Municipality is produced by the petitioners at Annexure C to the petition. No action was taken by the respondent Municipality on the basis of the resolution of the Executive Committee and therefore a representation dated 28.11.81 was made by the petitioners to the Chief Officer, Nadiad Municipality with a request to adopt the resolution passed by the Executive Committee. Thereafter, the General Board of the Municipality passed a unanimous resolution dated May 12, 1983 providing that the petitioners should be paid salary in the pay scales of Rs.425-700. That resolution is produced by the petitioners at Annexure E to the petition. The grievance

made by the petitioners in the petition is that inspite of the two resolutions, they are being paid salary in pay scale of Rs.350-600 which is illegal. According to the petitioners, earlier before rendering of subsequent award, pay scales of all 4 categories were the same i.e. Rs.80-240 and therefore the Municipality is not justified in denying salary to the petitioners in the pay scale of Rs.425-700. What is claimed by the petitioners is that the petitioners are discharging the same duties as are being discharged by the Treasurer and Stores Clerk (Sr) employed with the Municipality and therefore on the principles of equal pay equal work, they are entitled to pay scale of Rs.475-700. It is also claimed that the two resolutions are not set aside by any authority and as they are valid, there is no reason why the respondents should not be called upon to implement them. Under the circumstances, the petitioners have filed this petition and claimed reliefs to which reference is made earlier.

3. Mr.Jashbai Kalidas, Chief Officer of the Nadiad Municipality has filed reply affidavit controverting the averments made in the petition. What is stressed in the reply is that the pay scales fixed in I.T.Reference No. 200/77 are based on qualifications and as the petitioners are not qualified to draw pay scale of Rs.475-700 they are not entitled to the reliefs claimed in the petition. It is also mentioned in the reply that the award passed by the Industrial Tribunal which is not set aside by Higher Forum could not have been set at naught by passing the two resolutions and as the resolutions on which reliance is placed by the petitioners are illegal, the petition should be dismissed. The petitioners have filed an affidavit in rejoinder and reiterated what is stated by them in the petition.

4. Mr.P.K.Jani, Learned Counsel for the petitioners submitted that before passing of the award in Reference (IT) No.200/77, the petitioners were getting the same pay scale as was admissible to Treasurer and Stores Clerk (Sr) and therefore the respondent should be directed to pay the salary to the petitioners in the pay scale of Rs.475-700. It was stressed that the resolution of the Executive Committee as well as the resolution of the General Board of the Municipality being legal, the respondent should be called upon to implement the same and pay to the petitioners salary in the pay scale of Rs.475-700. What was claimed was that the action of the respondents in not paying the salary to the petitioners in the pay scale of Rs.475-700 being arbitrary and violative of the provisions of Article 14 of the Constitution, the petition should be accepted.

5. Mr.M.C.Shah, Learned Counsel for the respondent nos.1 & 3 pleaded that the pay scales are fixed on the basis of qualifications of the candidates and therefore the principle of equal pay equal work is not applicable to the facts of the present case. It was argued that neither of the petitioners is LSGD, nor any of them is a graduate and therefore the petitioners are not entitled to pay scale of Rs.475-700. What was highlighted by the Learned Counsel for the Municipality was that award rendered in Reference No. 200/97 to which employees of Nadiad Municipalities were parties has not been set aside and hence as the said award could not have been rendered nugatory by passing resolutions, the reliefs prayed for in the petition should not be granted.

6. Mr.Sudhanshu Patel, Ld. AGP appearing for respondent no.2 has submitted that the disparity in pay scales is based on qualifications and therefore the petition should be dismissed.

7. I have heard the Learned Counsel for the parties and taken into consideration the documents produced on the record of the petition. It is true that before the award was rendered by the Industrial Tribunal, Gujarat State, Ahmedabad in Reference (IT) No.200/77 pay scales of all the four categories i.e. Treasurer, Payment Clerk, Stores Clerk (Sr) and Establishment Clerk (Sr) were equal i.e. 80-240. However, on the basis of the consent terms, the Tribunal had passed award in IT Reference No. 200/77 whereunder, Payment Clerk and Establishment Clerk (Sr) are entitled to pay scale of Rs.350-600. This award has not been set aside or modified by any Higher Forum. From the affidavit in reply it becomes evident that the award in Reference (IT) No.200/77 which was published on March 13, 1978 has provided different pay scales on the basis of qualifications for the Sr.Stores Clerk and Others. The Sr.Stores Clerk is entitled to pay scale of Rs.425-700 because the qualification for the said post is that the candidates should be graduate and must have passed LSMGD. Thus the difference in pay scales is based on qualifications. The award which is produced by the respondent alongwith the reply affidavit makes it abundantly clear that the graduation is the minimum qualification for Sr.Stores Clerk and a Sr.Stores Clerk in order to earn salary in the scale of Rs.425-700 should complete 15 years of service. Though in the rejoinder affidavit, it is stated that the difference in salary is not based on qualification, nothing has been pointed out by the petitioners to the contrary. The averments made

in the reply affidavit to the effect that none of the petitioner is LSGD and neither of them is a graduate is not denied by the petitioners though affidavit in rejoinder is filed by them. The averments made in the affidavit in reply read that the award make it clear that the disparity in pay scales is based on qualifications. The submission made by the Learned Counsel for the respondents to the effect that the award passed by the Tribunal in Reference IT No. 200/77 has not been modified or set aside by any Higher Forum and same could not have been rendered nugatory by the Municipality by passing resolutions deserves consideration while exercising powers under Article 226 of the Constitution of India. When the principle of equal pay for equal work is sought to be invoked the claimants must not only establish that the nature of the work is identical but also that there was no reasonable basis to treat them separately. Mere similarity in the nature of the work of two groups of employees is not sufficient to attract the principle of equal pay for equal work.

In Gabriel Saver Fenrale & Others Vs. State of Karnataka and Ors. 1995 Supplementary 1 SCC 149, the Supreme Court has ruled that different pay scales on the basis of qualifications is valid and does not involve invidious discrimination. Again in Central Hospital Vs. Savita S Bodake and Others 1995 Supplementary (3) SCC Page No. 439, auxillary nurse midwives were claiming same salary as was being paid to the Staff Nurse. It was noticed that their duties were overlapping and in absence of the latter the former were required to carry out the same work what the latter did. The Central Administrative Tribunal had directed for payment of salary of Staff Nurse to an auxillary nurse midwives. The Supreme Court found that Auxillary Nurse midwife were not possessing requisite qualifications for appointment as Staff Nurse. While setting aside the judgement of the Central Administrative Tribunal, the Supreme Court has held that parity in pay cannot be claimed when requisite qualifications are different.

8. As the petitioners are not found qualified to draw the pay scale of Rs.425-700, I am of the view that no directions can be given to the respondent no.1 to pay to the petitioners salary in the pay scale of Rs.425-700 and implement the resolution passed by the Executive Committee as well as the resolution passed by the General Board of the Municipality. The contention that the resolution passed by the General Body has not been set aside by any Higher Forum in exercise of powers under Section 258 of the Gujarat Municipalities Act, 1983 and

therefore they being legal should be directed to be implemented has no substance. Merely because suo moto powers are not exercised to set aside a resolution, a resolution if otherwise illegal does not become legal resolution. If it is otherwise found to be illegal, illegality of such a resolution can be set up in any collateral proceedings. The respondents by filing reply have successfully demonstrated before the Court as to how the resolutions passed by the respondents are illegal. Under the circumstances, the Court while exercising powers under Article 226 cannot direct the authorities to implement resolutions which are found to be illegal. On overall view of the matter, I am of the opinion that no case is made out by the petitioners for directions as are claimed in Para 19(A) of the petition. The petition therefore is liable to be dismissed.

9. For the forgoing reasons, the petition fails and is dismissed. Rule is discharged with no orders as to costs.

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